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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Angel Malave, an individual, Plaintiff,)	Case No. CV11-7371 R (JEMX)
	)	<i>Hon. Manuel L. Real</i>
)	
vs.	)	SECOND Amended Complaint
	)	For
DEBT RESOLUTION	)	(1) Fraud
CENTER, f/k/a	)	(2) Violation Of Consumer
FREEDOM DEBT CENTER, a	)	Legal Remedies Act
California Corporation;	)	(3) Violation Of The Electronic
NOTEWORLD, LLC, d/b/a	)	Funds Transfer Act, 15
NOTEWORLD SERVICING	)	U.S.C. § 1693 et seq.
CENTER, a Delaware limited	)	(4) Negligent Infliction of
liability company,		Emotional Distress
NATIONWIDE SUPPORT		
SERVICES, INC., a California		
corporation and Does 1 to 10,		Courtroom: 8, Spring Street, 2 nd
		floor
Defendants		

COMES NOW the plaintiff Angel Malave, complaining of defendants DEBT
RESOLUTION CENTER, INC., a California corporation, DEBT

1 RESOLUTION CENTER, LP, a California limited partnership,
2 NATIONWIDE SUPPORT SERVICES, INC., a California corporation and
3
4 Does 1 through 10, Inclusive, and alleging as follows:

5 **GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

6 THE PARTIES
7

8 1. At all times herein material, defendant DEBT RESOLUTION
9 CENTER, INC, was a corporation, company, or other business or
10 associative entity, organized and existing under and by virtue of the laws
11 of the State of California or of one of the United States, and was doing
12 business in the County of Los Angeles, State of California under the
13 name of Freedom Debt Center and then Debt Resolution Center.
14

15
16 2. At all times herein material, DEFENDANT DEBT RESOLUTION
17 CENTER, INC. received compensation for engaging in the business of
18 constructively receiving money through its agent for the purpose of
19 distributing same among creditors in payment or partial payment of the
20 obligations of a debtor, plaintiff Mr. Malave. As such, it was a prorater
21 within the meaning of Financial Code § 12002.1 and pursuant to
22 *Nationwide Asset Services, Inc. et al v. Preston DuFauchard* 164 Cal.
23 App. 4th 1121 (2008).
24
25

26 3. At all times herein material, defendant DEBT RESOLUTION
27
28

1 CENTER, LP, was a limited partnership, corporation, company, or other
2 business or associative entity, organized and existing under and by
3 virtue of the laws of the State of California or of one of the United States,
4 and was doing business in the County of Los Angeles, State of California
5 under the name Freedom Debt Center.
6
7

8 4. At all times herein material, DEFENDANT DEBT RESOLUTION
9 CENTER, LP received compensation for engaging in the business of
10 constructively receiving money through its agent for the purpose of
11 distributing same among creditors in payment or partial payment of the
12 obligations of a debtor, plaintiff Mr. Malave. As such, it was a prorater
13 within the meaning of Financial Code § 12002.1 and pursuant to
14 *Nationwide Asset Services, Inc. et al v. Preston DuFauchard* 164 Cal.
15 App. 4th 1121 (2008).
16
17
18

19 5. Defendant Debt Resolution Center, Inc. and Defendant Debt
20 Resolution Center, LP, both have as registered address 3 Whatney Ste
21 200, Irvine, California 92618 and they share an agent for service, John
22 Nazarian at the same address.
23
24

25 6. Defendant Debt Resolution Center, Inc. and Defendant Debt
26 Resolution Center, LP are related entities and while in existence since
27 January of 2009, were doing business as Freedom Debt Relief in 2009.
28

1 They are referred to hereinafter as "DRC".

2 7. At all times herein material, Defendant NATIONWIDE SUPPORT
3 SERVICES, INC. (hereinafter "Nationwide") was a corporation organized
4 under the laws of California. Nationwide has its principal offices in Irvine,
5 California.
6

7
8 8. At all times herein material, Defendant NATIONWIDE was a for-
9 profit company and business partner of DRC engaged in managing,
10 counseling, settling, adjusting, prorating and liquidating the indebtedness
11 of debtors.
12

13 9. At all times herein material, Defendant NATIONWIDE was a check
14 seller within the meaning of Financial Code § 12002(a) pursuant to
15 *Nationwide Asset Services, Inc. et al v. Preston DuFauchard* 164 Cal.
16 App. 4th 1121 (2008).and an agent for DRC.
17
18

19 10. At all times herein material, plaintiff Angel MALAVE, was an
20 individual residing in the county of Los Angeles, State of California.
21

22 11. The true names and capacities, whether corporate,
23 associate, individual or otherwise, of defendants Does 1 through 10,
24 inclusive, are unknown to plaintiff who sues said defendants by such
25 fictitious names. Each of the defendants designated herein as a Doe is
26 negligently or otherwise legally responsible in some manner for the
27
28

1 events and happenings herein referred to and caused injuries and
2 damages proximately thereby to the plaintiff, as herein alleged.

3
4 12. Plaintiff will ask leave of court to amend this complaint to
5 show their names and capacities when the same have been ascertained.

6
7 13. At all times herein mentioned, defendants, and each of them,
8 were the agents, partners, joint venturers, representatives, servants,
9 employees, successors-in-interest, co-conspirators and assigns, each of
10 the other, and at all times pertinent hereto were acting within the course
11 and scope of their authority as such agents, partners, joint venturers,
12 representatives, servants, employees, successors, co-conspirators and
13 assigns, and that all acts or omissions alleged herein were duly
14
15 committed with the ratification, knowledge, permission, encouragement,
16
17 authorization and consent of each defendant designated herein.

18
19 **The partnership of DRC and Nationwide – the companies act**
20 **together to ensnare and defraud consumers desperate for debt**
21 **relief, including Mr. Malave**

22 14. DRC operate “front-end” debt settlement companies that hold
23 themselves out as providing debt settlement services for consumers
24 indebted with credit card debt

25
26 15. DRC performs the "front-end" marketing and sales of debt
27 settlement services to consumers, obtains executed agreements for
28

1 same, and then refer consumers to Nationwide for the so-called debt
2 settlement services.

3
4 16. Defendant Nationwide provided training, including sales
5 scripts and all contracts and agreements, to DRC.

6
7 17. When a consumer became a customer of DRC, that
8 customer's file was immediately forwarded to Nationwide. Nationwide
9 handled the client from that point forward.

10
11 18. Defendant Nationwide performs the actual "backend" debt
12 settlement services for consumers to whom "front end" debt settlement
13 companies have successfully marketed debt settlement programs.

14
15 19. Consumers signing up with the DRC do not know their
16 private finances are being seen and worked on by DRC's business
17 partner Nationwide.

18
19 20. When Consumers contact customer support individuals at
20 Nationwide, those Nationwide employees state they are with customer
21 service, so that consumer customers believe they are still talking to DRC
22 employees.

23
24 21. Nationwide email addresses end with "csc" for customer
25 service, rather than have an email address which would give away that
26 they are at a different company than DRC.
27
28

1 22. Consumers signing up with DRC do not know that
2 Nationwide accesses their trust accounts to pay itself, to pay DRC, and
3
4 occasionally, for a minority of consumers, to pay creditors.

5 23. DRC are feeder-marketing agents for Defendant Nationwide
6 and engage in securing debt settlement clients for Nationwide.
7

8 24. Defendant Nationwide itself fosters the development of such
9 feeder “front-end” debt settlement companies through a “fast-track”
10 program whereby individuals with little or no resources or experience can
11 become affiliates of Nationwide, capable of holding themselves out to
12 consumers as successful businesses actually engaged in helping
13 consumers avoid bankruptcy by negotiating settlement of consumers’
14 credit card debt.
15
16
17

18 25. Virtually all of the key functions that DRC claims to perform
19 are actually performed by NATIONWIDE.
20

21 26. DRC performs the marketing functions designed to enroll
22 consumers in a debt settlement program.

23 27. Upon information and belief, Nationwide is responsible for
24 negotiating the settlements with consumers' creditors.
25

26 28. Nationwide and DRC promote debt settlement programs
27 through standardized contracts. These contracts include a debt
28

1 settlement agreement with marketing companies, DRC, and a "Sign Up
2 Agreement" with NoteWorld, a company out of Tacoma, Washington that
3 sets up trust accounts for the consumers, accessible by Nationwide.
4

5 **Faced with endemic predatory practices in the debt settlement**
6 **industry, most states have adopted statutes regulating debt**
7 **settlement activities, including limitations on fees that consumers**
8 **may be charged.**

9 29. California's Check Sellers, Bill Payers and Proraters Law,
10 Financial Code § 12000 et seq., prohibits abusive debt settlement
11 practices, including the charging of predatory fees and the time at which
12 such fees are to be paid.
13

14 30. Defendant charged a 17% fee to Mr. Malave in the written
15 agreement.
16

17 31. This fee violates the California Check Sellers, Bill Payers and
18 Proraters Law (Financial Code §123 wherein a prorater's services may
19 not exceed in the aggregate twelve percent (12%) for the first three
20 thousand dollars (\$3,000), eleven percent (11%) for the next two
21 thousand dollars (\$2,000) and ten percent (10%) for any of the remaining
22 payments distributed by a prorater to the creditors of a debtor, except for
23 payments made on recurrent obligations.
24
25

26 32. The central role of private civil actions in the enforcement of
27 California's Check Sellers, Bill Payers and Proraters Law (Financial Code
28

1 §12000, et seq.) is the Consumer Legal Remedies Act (Civil Code
2 §1750, et seq. "CLRA"). The CLRA prohibits deceptive acts or practices
3 in the sale or lease of goods and services to consumers.
4

5 33. At all times material to allegations made in this Complaint,
6 Defendants were mindful of the history of predatory practices in the debt
7 adjusting industry and mindful of regulations governing that industry,
8 including those of California.
9

10 34. Defendants knew that the initial fees involved in debt
11 settlement program carried out by them, and as promoted by their
12 affiliates, including FDC, were criminally illegal and unfair in that they
13 exceeded the amount permitted by Financial Code §12314, rendering
14 their debt settlement contract void. Defendants failed as proraters,
15 pursuant to Financial Code §12314(c), to at least once each month pay
16 not less than 70 percent of all funds received from the debtor to the
17 creditors of the debtor.
18
19
20
21

22 35. Nationwide, nonetheless, initiated automatic transfers from
23 Malave's trust account, for purposes of paying the illegal and unowed
24 fees, and Nationwide thereafter paid the illegal and unowed fees, all for
25 the purpose of carrying out the subject debt settlement program and
26 unjustly enriching itself. Nationwide's misconduct is continuing in nature.
27
28

1 36. Defendants promoted, contracted for, and carried out (or held
2 itself out to consumers as carrying out) debt adjusting services for
3 Malave, and directly or indirectly secured for themselves a portion of the
4 illegal and unowed fees paid by Malave.

5
6 37. Defendants knew that fees associated with the debt
7 settlement program earned out by them, and promoted by their "front-
8 end" affiliates, including FDC, substantially and invariably exceeded 10%
9 of any one payment made by Malave.
10
11

12 **DRC and Nationwide are partners and jointly liable under direct,**
13 **vicarious and participatory liability.**

14 38. Defendants are joint and severally liable for the acts of each
15 other under the following theories of direct, participatory and vicarious
16 liability.
17

18 39. NATIONWIDE Defendants ratified any wrongful conduct of
19 DRC.
20

21 40. DRC ratified any wrongful conduct of NATIONWIDE.
22

23 41. DRC and NATIONWIDE act as partners in their debt
24 settlement business. Sean Cowell, the unofficial vice president of
25 operations at Debt Resolution Center and a partner-owner of the
26 company, refers to Nationwide as Debt Resolution Center's "partner" and
27
28

1 stated that DRC considered Nationwide to be one with DRC, testifying at
2 his deposition that Nationwide is “our partner. Yes. We --we consider
3 them ‘us.’”
4

5 42. Nationwide provides training on all aspects of Debt
6 Resolution Center’s business, including client intake,
7

8 43. Nationwide provides all agreements and notices for Debt
9 Resolution Center to provide to its clients.
10

11 44. Nationwide refers to Debt Resolution Center’s clients as
12 Nationwide’s clients or customers.
13

14 45. Nationwide keeps custody of all client information, including
15 the agreements between consumer clients and Debt Resolution Center.
16

17 46. For these reasons, when this pleading references the liability
18 of one Defendant it applies equally to the other Defendant, unless
19 otherwise indicated.
20

21 **Mr. Malave, desperate to reduce his debt while facing cancer, relied**
22 **on DRC’s fliers and hard-sell techniques taught by Nationwide and**
23 **signed up to be a DRC customer**

24 47. In 2007-2009, Plaintiff Angel Malave began to experience
25 financial strain and difficulties in paying his credit cards because of the
26 economic downturn that this country has experienced, which caused his
27 income to temporarily decrease as his salary was almost 100%
28

1 commission sales.

2 48. Mr. Malave was making payments on his credit accounts,
3
4 falling behind at times but not more than 30 days before paying.

5 49. In January 2009, Mr. Malave found out he had cancer and
6 worried he would likely miss months of work, which would effect his
7
8 commission-based income and bonuses. He was afraid for his life and
9 he did not want to leave his family with the credit card debt he had
10 accumulated.
11

12 50. Mr. Malave felt he needed a quick solution to settle the debt
13 so that no matter the outcome of his potentially terminal illness, he would
14 not leave debt to his family.
15

16 51. In 2008 and January 2009, Mr. Malave had been getting
17 official looking fliers from Freedom Debt Relief (now called Debt
18 Resolution Services). This flier was designed to mimic a governmental
19 document, and came folded with a form number "1040-1120S" in block
20 type on the front of the sealed flier.
21
22

23 52. These fliers were distributed in January 2009 by DRC, who
24 designed them itself by copying another front-end debt settlement
25 company. The fliers were sent out using demographic data and targeted
26 people in Mr. Malave's Antelope Valley neighborhood, which was hard
27
28

1 hit by the recession.

2 53. These fliers gave close to an exact amount of Mr. Malave's
3 debt and informed him how, by calling Defendant, he could lower his
4 monthly payments and pay off all debt within 3 years.
5

6 54. The flier specifically promised the following:
7

- 8 a. "0% Interest Rate";
9 b. "Reduce Payment up to 40%";
10 c. "Become Debt Free in 24 months";
11 d. "Save \$46,017 in principle and interest";
12 e. "22.9 months to be debt free"; and
13 f. "Interest Rate 0%" and
14 g. "Approval ID R12-028284".
15
16
17

18 55. Relying on the flier, Mr. Malave contacted DRC for help in
19 lowering his credit card debts because he feared he may be close to
20 dying.
21

22 56. In reliance on the information on the flier, Mr. Malave called
23 Debt Resolution Center's number in February 2009 and spoke to a
24 consultant named Bonnie Bertrand. As she had been trained by
25 Defendants, Ms. Bertrand told Mr. Malave That Freedom Debt Relief
26 (DRC) would:
27
28

- a. "Help you achieve financial freedom",
- b. "Avoid complicated bankruptcy procedures",
- c. "Eliminate your debt in as little 3 years",
- d. and that "usually the purpose of the lawsuit is to force a settlement on the matter. In our experience, most creditors would rather not go to the expense of suing and simply try to negotiate a settlement.",
- e. that "Our Company maintains a very professional and cooperative relationship with the creditors in order to reach the most favorable settlement offers for our clients."
- f. And that the Defendants helped many, many consumers reach favorable settlements on their debt and avoid bankruptcy.

57. All the statements provided to Mr. Malave by Ms. Bertrand and other DRC employees were according to the scripts and training provided by their business partner, Nationwide. Ms. Bertrand and other DRC employees were trained to provide the false information in an effort to get Mr. Malavo to sign up for program whereby he paid high fees to Defendants for little or no work.

58. In February 2009, DRC and Nationwide had actual

1 knowledge that the promises made verbally, like the information in the
2 flier, were false. This was particularly true in that DRC had knowledge
3 that the majority of their customers did not complete the program and did
4 not settle their debts because the customers money was going to fees to
5 the Defendants rather than settlements.
6
7

8 59. In February 2009, DRC and Nationwide had actual
9 knowledge that they had no special relationships with creditors and that
10 furthermore, some creditors would refuse to settle with debt settlement
11 companies.
12

13 60. In or about February 2009, relying on their verbal promises of
14 freedom from debt, their statements about large numbers of happy
15 satisfied clients, and their purported relationships with creditors, Malave
16 and Defendants entered into a written agreement (the "Agreement")
17 whereby Defendant Freedom Debt Center would provide debt
18 management services and attempt to settle Malave's consumer debt with
19 his creditors for less than .50 on the dollar.
20
21

22 61. Pursuant to the terms of the agreement, Defendants would
23 receive 17% of Malave's total debt as a "service fee." Malave's total debt
24 in the agreement was \$32,030.50.
25
26

27 62. Pursuant to the terms of the agreement, 100% of the first
28

1 three payments by Mr. Malave went directly to Defendants' fees and
2 none to his trust account; therefore for at a minimum of three months,
3 Defendants took fees without doing any work other than misleading Mr.
4 Malave so that he would join the program.
5

6 63. DRC provided literature stating Malave would pay "0" interest
7 to creditors through their plan, allocated over 36 months. That of
8 Malave's total debt at inception, \$32,030.50, Malave would only pay
9 \$21,460.44 over the same 36 months according to Defendant's proposal.
10
11

12 64. In or about February 2009 Malave deposited \$628.12 into
13 Defendant Noteworld LLC pursuant to his agreement with Defendants.
14

15 65. Malave also signed a release with Freedom Debt (Debt
16 Resolution) which allowed this defendant to communicate with his
17 creditors and to "to communicate, validate, negotiate and settle my/our
18 debts, with all settlements subject to my/our final approval."
19

20 66. Notwithstanding the "subject to my final approval" language
21 in the communications release, Malave also signed a Pre-Authorization
22 Settlement Release which allowed DRC to accept on Mr. Malave's
23 behalf, without any further communications, any settlement offers for
24 under 50% of what the creditor claimed was owed and furthermore, to
25 deduct said settlement amount from Mr. Malave's trust account for the
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1 purpose of paying the creditor, again without further permission or
2 communication being necessary.

3
4 67. As part of signing up with Defendants, Mr. Malave executed a
5 Debt Settlement Agreement (“DSA”) between DRC and himself for the
6 purpose of settling the enrolled accounts. The recitals of this DSA
7 provided that DRC agreed “to provide debt settlement services to. . . [Mr.
8 Malave] under the terms and conditions of this Agreement (the
9 “Service”).”
10
11

12 68. In addition, the DSA specifically incorporated by reference a
13 Funds Transfer Schedule (“FTS”) for the creation of a settlement reserve
14 account. The FTS, by the contract terms of the DSA, would be sent to
15 Mr. Malave in a “Welcome Packet” provided to him at a later date.
16
17

18 69. Mr. Malave neither discussed nor saw the Funds Transfer
19 Schedule for his settlement reserve account until days after signing his
20 DSA with DRC.
21

22 70. The Compensation clause of the DSA states that “in
23 consideration for the [debt settlement] Service provided” by the DRC, Mr.
24 Malave was to pay DRC a Service Fee equal to 17% of the Program
25 Debt. Approximately 5% to 17% of the estimated settlement amount,
26 including the Service Fee, was to be paid upon acceptance into the
27
28

1 program over a 90 day period.

2 71. Most importantly, this same clause mandates that Mr. Malave
3
4 “not make or request changes to the Funds Transfer Schedule for the
5 first 90 days following commencement of . . . [his] participation in the
6 program or the first three payments, whichever comes first.”
7

8 72. Furthermore, the DSA provides that “the execution of this
9 Agreement represents the consent of . . . [Mr. Malave] to allow . . . [DRC]
10 to draft by EFT the Services Fee from . . . the NoteWorld account
11 established” by Mr. Malave for the purpose of settling his debts.
12

13 73. As such, DRC drafted the DSA in such a way as to grant
14 themselves the exclusive rights to control the amount of funds
15 transferred from Mr. Malave’ bank account to the settlement reserve
16 account that he established with NoteWorld for the first 90 days of the
17 Agreement and to determine the percentage of the Service Fee to be
18 paid within this 90 day period. As demonstrated below, DRC used these
19 contractual rights to ensure that 100% of these initial payments were
20 allocated to pay itself and defendant NoteWorld.
21
22
23

24 74. Per the DSA, Mr. Malave contracted with DRC for the
25 settlement of his debt totaling \$21,691.94. Per the contract, he was
26 obligated to pay a 17% Service Fee totaling \$3,687.66. Additionally, Mr.
27
28

1 Malave had to pay an amount of \$1,201.86 to \$3,687.66 within 90 days
2 of being accepted into the program.

3
4 75. In order to pay for DRC' services and pay off his creditors,
5 Mr. Malave was obligated to establish a trust account with NoteWorld.

6
7 76. Also on or about February, 2009, the employees for DRC that
8 enrolled Mr. Malave into the Debt Settlement Program provided him with
9 a Sign Up Agreement ("SUA"). This SUA was meant to be a contract
10 between defendant NoteWorld and Mr. Malave for the creation of a
11 settlement reserves account. The monies transferred to this account
12 were to be used for the settlement of the debt enrolled in DRC' Debt
13 Settlement Program by Mr. Malave.
14

15
16 77. Unknown to Mr. Malave, DRC then turned over his account to
17 Nationwide, who used the permission provided to Debt Resolution to pay
18 themselves as well as Debt Resolution from the Noteworld trust account.
19

20
21 78. On or about March 2009, funds to create Mr. Malave'
22 settlement reserve account with defendant NoteWorld were transferred
23 on a monthly basis from his bank account via Electronic Funds Transfer
24 ("EFT") to NoteWorld. These monthly drafts were performed according
25 to the FTS and a document entitled "Monthly Draft Schedule" sent to Mr.
26 Malave in his "Welcome Packet."
27
28

1 79. This "Welcome Packet" and all further communications were
2 with employees at Nationwide, but they deliberately misled Mr. Malave,
3 and pretended to be employed at a department within Debt Resolution.
4

5 80. The pre-determined allocation of the funds established by
6 Defendants and transferred from Mr. Malave' bank account to NoteWorld
7 and then to Defendants made it impossible for Mr. Malave to accrue any
8 funds in his trust account for the first 90 days of the contractual
9 relationship.
10
11

12 81. As demonstrated by the FTS and Monthly Draft Schedule,
13 the primary purpose of Mr. Malave' monthly payments from February,
14 2009 to May 2010 was to pay the Defendants for services not yet
15 rendered. The accruing of settlement reserve funds for the settlement of
16 Mr. Malave' debt was not the primary goal of the purported Debt
17 Settlement Program until a full 15 months after Mr. Malave entered into
18 his agreement with defendant the DRC.
19
20
21

22 82. The flier had directly implied that Mr. Malave's payment to the
23 debt settlement program would be in place of his previous payments
24 made on his debt.
25

26 83. Once enrolled in the DRC' Debt Settlement Program, Mr.
27 Malave was given advice and instructions on how to default on his
28

1 enrolled accounts, how to deflect creditors calling him regarding these
2 accounts and, as a consequence, how to incur legal liability. However,
3 all this advice was actually provided by Nationwide.
4

5 84. In reliance on the assurances made by Defendants'
6 employees, Mr. Malave followed the instructions given to him. He
7 allowed his accounts to go into default.
8

9 85. Also in accordance with the DRC' advice, Mr. Malave told his
10 creditors to stop calling him regarding his debts and directed them to
11 contact the DRC.
12

13 86. Mr. Malave' creditors continued to call Mr. Malave. In
14 response to their continued calls, Mr. Malave sent letters explaining that
15 the DRC was going to negotiate and settle Mr. Malave' outstanding debts
16 with them. These letters were provided by Defendants.
17

18 87. As a result of Defendants instructions to Malave to stop
19 paying on his consumer debts listed with Defendants in or about
20 February 2009, Malave was sued in Los Angeles Superior Court, North
21 District on four of his six debts. The case numbers are 09C05156;
22 09C05681; 09C05604; and 09C04313.
23

24 88. The latter case resulted in a judgment against Malave for
25 \$5,824.30.
26
27
28

1 89. Nationwide provided legal advice – forms but also detailed,
2 applied information on how to fill out the forms and then reviewing and
3 editing of Mr. Malave's documents to be filed in court.
4

5 90. Nationwide's advice included a formulaic motion for
6 arbitration which was improper for Los Angeles Superior court.
7

8 91. Mr. Malave lost his first motion for arbitration when he wrote it
9 with the help and advice from Nationwide, so he hired a paralegal to
10 redraft that motion and to fight his other collection suits.
11

12 92. Until he had to hire the paralegal, Mr. Malave continued to
13 pay the Defendants their monthly fees, a portion of each which was
14 transferred to Nationwide and then a percentage of that would go to Debt
15 Resolution Services. However, the DRC and Nationwide rendered no
16 debt settlement services on behalf of Mr. Malave and defendants made
17 no payments on behalf of Mr. Malave.
18

19 93. Malave is informed and believes that his credit rating has
20 suffered extreme damage as a result of four lawsuits filed against him
21 and the six accounts which were charged off. While Mr. Malave was
22 having trouble paying more than the minimums or paying on time each
23 month, his payment history was much better prior to signing with
24 Defendants and quitting all payments and being sued four times.
25
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1 94. Additionally, Malave paid out considerable sums fighting the
2 four consumer collection actions simultaneously without any assistance
3 from Defendants.
4

5 95. Malave is further informed and believes, and thereon alleges,
6 that as a result of Defendants actions he was under undue stress and
7 this effected his precarious health while he was undergoing
8 chemotherapy and after as well.
9

10 96. Defendants made no payments on behalf of Malave to his
11 creditors and made no attempts to settle his debts in a timely manner, if
12 at all.
13
14

15 97. As aproximate and foreseeable consequence of the
16 Defendant's malicious and purposeful trickery alleged herein, Malave
17 has suffered, and will continue to suffer, damages in an amount in
18 excess of the minimum jurisdiction of the Court, according to proof at
19 trial.
20
21

22 **FIRST CAUSE OF ACTION: FRAUD *Against all Defendants and***
23 ***Does 1 - 10***

24 98. Plaintiff here incorporates and realleges by reference all
25 preceding paragraphs, as if each were here separately alleged in full.
26

27 99. At the time the flier was printed and distributed by Debt
28

1 Resolution Center and relied upon by Mr. Malave, Debt Resolution
2 Center knew the statements on the flier were false and had no intent to
3 follow through on any of the promises.
4

5 100. Debt Resolution Center created and distributed a flier with
6 known false information, including the following:
7

- 8 a. "0% Interest Rate" – Debt Resolution Center knew that
9 interest would continue to accumulate, together with late fees
10 and penalties, on all debts entered into the program;
11
12 b. "Reduce Payment up to 40%" -- Debt Resolution Center
13 knew that there were no guarantees as to the reduced
14 settlement amount, if any, a creditor would accept and further
15 more, the inclusion of the fees to Debt Resolution Center and
16 Nationwide meant that even if all creditors accepted the
17 reduced settlements, the overall payment would still be
18 above 40% as the Defendants fees were at least 17% of total
19 debt.
20
21 c. "Become Debt Free in 24 months" -- Debt Resolution Center
22 knew that there were no guarantees that consumers who
23 entered the program would become debt free and that
24 furthermore, the majority of programs were approximately 36
25
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1 months and that the majority of consumers did not complete
2 the program and did not become debt free.

- 3
4 d. "Save \$46,017 in principle and interest" – at the time of
5 sending the flier, Debt Resolution Center had no idea of the
6 amount of Mr. Malave's debt nor how much could be saved
7 as this amount relies on the time Mr. Malave would take to
8 pay off his debt, whether or not he filed bankruptcy, and
9 whether or not debt entered into their program was
10 successfully settled at all.
11
12 e. "22.9 months to be debt free" -- Debt Resolution Center knew
13 that there were no guarantees that consumers who entered
14 the program would become debt free and that furthermore,
15 the majority of programs were approximately 36 months and
16 that the majority of consumers did not complete the program
17 and did not become debt free.

- 18
19 f. "Interest Rate 0%" – Debt Resolution Center knew that
20 interest would continue to accumulate, together with late fees
21 and penalties, on all debts entered into the program;
22

- 23
24 g. "Approval ID R12-028284". Sean Cowell, the acting vice
25 president of operations for Debt Resolution Center, admits
26
27
28

1 that this number was made up and there were no approval
2 ID's used by Defendant, this number was put on the flier
3 solely to convince prospective customers like Mr. Malave that
4 they were specially chosen because Debt Resolution Center
5 could settle their debts when Debt Resolution Center had in
6 reality no idea if Mr. Malave could be helped by their
7 program, especially as the vast majority of debt settlement
8 customers drop out before their debts are settled.
9

10
11
12 101. Defendants distributed the fliers with the false information to
13 Mr. Malave, intending him to rely on these false assertions and to call the
14 DRC office.
15

16 102. After receiving the flier, Mr. Malave called and spoke with a
17 salesperson, Bonnie Bertrand, at DRC.
18

19 103. Ms. Bertrand, as she had been trained and following the
20 scripts provided to her by defendants, told Mr. Malave the following:
21

- 22 a. Signing with DRC would "Help him achieve financial
23 freedom", which as known false as most consumers who
24 joined did not receive financial freedom, they had few to no
25 debts settled and often their credit worsened and they would
26 be sued;
27
28

- 1 b. Signing with DRC would "avoid complicated bankruptcy
2 procedures" with implications that bankruptcy would ruin
3 someone's life and credit for 10 years, which is false as
4 bankruptcy can provide debt relief for much less cost and
5 consumer's credit begins improving immediately after filing;
6
7 c. Signing with DRC would allow Mr. Malave to "eliminate his
8 debt in under 3 years", which is false as Mr. Malave – as is
9 true for most consumers who joined DRC – did not have any
10 debts settled by DRC and instead he was sued, which is a
11 very common reaction of creditors when consumers join debt
12 settlement companies,
13
14 d. and that "usually the purpose of the lawsuit is to force a
15 settlement on the matter. In our experience, most creditors
16 would rather not go to the expense of suing and simply try to
17 negotiate a settlement.", This is false and known to be false,
18 DRC and Nationwide had actual knowledge that a large
19 percentage of their clients were sued and ended up with
20 judgments and that some creditors would not only sue, but
21 would refuse to even work with debt settlement companies.
22
23 e. that "Our Company maintains a very professional and
24
25
26
27
28

1 cooperative relationship with the creditors in order to reach
2 the most favorable settlement offers for our clients." This is
3 known to be false, creditors and debt settlement companies
4 have quite adversarial relationships as debt settlement
5 companies tell their clients to not pay creditors and take
6 money their clients could have used to pay creditors, DRC
7 and Nationwide understand their own industry and were
8 absolutely telling untrue statements when saying that they
9 have cooperative relationships with creditors;
10

- 11
12
13 f. And that the Defendants helped many, many consumers
14 reach favorable settlements on their debt and avoid
15 bankruptcy. This is untrue and known by DRC and
16 Nationwide to be untrue as the vast majority of consumers
17 who signed up with DRC and/or Nationwide had little to no
18 debt settled and many end up sued and often file bankruptcy
19 after having lost thousands to high fees to DRC and/or
20 Nationwide.
21

22
23
24 104. Ms. Bertrand followed the practices and procedures
25 developed by Nationwide and she was trained in these practices and
26 procedures by Nationwide and DRC.
27
28

1 105. Defendants' practices and procedures involved providing
2 false information, that Nationwide and DRC knew was false, to
3 consumers such as Mr. Malave with the intent of getting Mr. Malave to
4 rely on the false statements and sign up with DRC.
5

6 106. Joining DRC was be to Mr. Malave's detriment as it cost him
7 significant amounts of money, ruin his credit and cause him to have to
8 fight legal battles against creditors and create great stress.
9

10 107. DRC and Nationwide knew that signing with their company
11 would be to Mr. Malave's detriment as much fewer then 10% of
12 consumers who joined DRC and Nationwide ended up debt free, and
13 many ended up sued.
14

15 108. The statements of the DRC employees, including Bonnie
16 Bertrand, show that DRC was acting as agent for Nationwide who was
17 actually responsible for all promised actions. These statements were
18 false when made, and it must have been known to defendants that they
19 were false or defendants made the statements with recklessly without
20 knowing whether they were true or false.
21

22 109. The DRC made the foregoing statements with an intent to
23 defraud Mr. Malave and others similarly situated, that is, the DRC made
24 the foregoing representations for the purpose of inducing the Mr. Malave
25
26
27
28

1 (and others in debt) to rely upon them and to act in reliance thereon so
2 that he would pay a sizable fee to the DRC and Nationwide.
3

4 110. At all times herein material, Mr. Malave was unaware of the
5 falsity of the foregoing representations, and acted in reliance upon the
6 truth of those representations, and was justified in relying on those
7 representations and in agreeing to pay the DRC for their promised
8 negotiation and settlement of debt.
9

10 111. Furthermore, at all times herein material, the DRC concealed
11 and suppressed from plaintiff the material facts that:
12

- 13 a. that the DRC, in conjunction with Nationwide, had developed
14 their sales pitch, written their customer agreements and
15 structured their FTS in such a way as to mislead and to
16 deceive plaintiff into believing that they would be providing
17 him with services for payment;
18
19 b. that the DRC, in conjunction with, had developed their sales
20 pitch, written their customer agreements and structured their
21 FTS in such a way as to exempt themselves from
22 responsibility for their fraudulent and willful injuries to plaintiff
23 in violation of Civil Code § 1668;
24
25 c. that defendant Nationwide would actually be charging plaintiff
26
27
28

1 monthly processing fees in excess of those recited in the

2 SUA presented to and signed by plaintiff at DRC offices;

3
4 d. that the DRC and Nationwide intended to take all of plaintiff's
5 money for their own personal use and investment before
6 providing any service to Plaintiff;

7
8 e. that the DRC and Nationwide would refuse to communicate
9 with Mr. Malave's creditors and collectors;

10
11 f. that the DRC and Nationwide's failure to provide plaintiff with
12 services would worsen his credit situation and relationships
13 with his creditors;

14
15 g. that following the DRC' advice would result in lawsuits
16 followed by judgments against Mr. Malave which would lead
17 to garnishment, liens and levies.

18
19 h. That Nationwide would access Mr. Malave's trust account to
20 pay itself and DRC.

21
22 112. The failure of the Defendants to disclose these facts, along
23 with their concealment or suppression of those facts, was done by the
24 DRC with the intent to defraud plaintiff.

25
26 113. These facts were all known by DRC and Nationwide and
27 intentionally hidden from Mr. Malave.
28

1 114. As a direct and legal result of the foregoing fraud, deceit and
2 misrepresentation by the DRC and their principal company, Nationwide,
3 the plaintiff Angel Malave has suffered monetary damages at an amount
4 to be determined at trial but known to be within the jurisdictional limits for
5 unlimited matters in this court.
6

7
8 115. Additionally, as a direct and legal result of the foregoing
9 fraud, deceit and misrepresentation by the DRC and their principal
10 company, Nationwide has caused Mr. Malave to suffer harm and severe
11 emotional distress, including mental distress, fraud, deceit and
12 misrepresentation by defendants, and each of them, mental suffering,
13 mental anguish, fright, nervousness, grief, anxiety, worry, mortification,
14 shock, humiliation, indignity, physical pain, and other highly unpleasant
15 mental reactions, now and into the future.
16
17

18
19 116. Additionally, as a direct and legal result of the foregoing
20 fraud, deceit and misrepresentation by the DRC and their principal
21 company, Nationwide has caused Mr. Malave to suffer harm and severe
22 emotional distress, including mental distress, fraud, deceit and
23 misrepresentation by defendants, and each of them, mental suffering,
24 mental anguish, fright, nervousness, grief, anxiety, worry, mortification,
25 shock, humiliation, indignity, physical pain, and other highly unpleasant
26
27
28

1 mental reactions, now and into the future.

2 117. The conduct of the DRC and their principal company,
3
4 Nationwide was malicious, oppressive and fraudulent, and constitutes an
5 intentional scheme to defraud Plaintiff and was intended to cause injury
6 by depriving him of his money and legal rights, and this conduct was
7
8 carried on by the Defendants with a willful and conscious disregard of
9 Plaintiff's rights. The Defendants' actions constitute despicable conduct
10 that subjected Plaintiff to cruel and unjust hardship. Said conduct
11
12 justifies an award of punitive damages in an amount to be proven at trial.
13

14 **SECOND CAUSE OF ACTION: Violation Of Consumer Legal**
15 **Remedies Act against all Defendants**

16 118. Nationwide, through it's front-end company DRC for
17 compensation, held itself out to named Plaintiff and to California
18 consumers as engaged in managing, counseling, settling, adjusting,
19 prorating or liquidating the indebtedness of debtors, and/or engaged in
20 such activities with respect to Malave and California consumers.
21
22

23 119. Nationwide, and its "front-end" affiliates, including DRC, are
24 proraters and otherwise engaged in debt adjusting within the meaning of
25 Financial Code §12000, et seq. and with respect to conduct alleged in
26 this Complaint.
27
28

1 120. Defendants violated Civil Code § 1750 et seq. and otherwise
2 engaged in unfair and deceptive acts or practices, committed in trade or
3 commerce, impacting the public interest, which conduct proximately
4 caused injury or harm to named Plaintiff and California consumers in
5 their business or property.
6
7

8 121. While services done by salespeople of involved in the sale of
9 credit, such as work performed by mortgage brokers, are outside the
10 scope of the CLRA, debt settlement is a service covered by the law.
11

12 122. Debt Settlement is a service independent of the granting
13 (selling) of the loan. This service is provided by independent companies
14 that are actually acting in opposition to the original creditors. The debt
15 settlement services are not ancillary to the provision of credit; rather,
16 they are a completely separate industry.
17
18

19 123. The debt settlement itself is a service – there is no “intangible
20 good” being provided by the Defendants or other debt settlement
21 companies.
22

23 124. Nationwide, knowingly aided and abetted "front-end"
24 prorater/debt adjuster affiliates including DRC, in the commission of
25 criminal, unfair, and deceptive practices, including practices violating
26 Civil Code § 1750 et seq., by giving substantial assistance that
27
28

1 proximately caused harm to named Plaintiff to California consumers in
2 their business and property.

3
4 125. The CLRA prohibits specific actions and Defendants violated
5 the CLRA by engaging in many of these actions.

6
7 126. Defendants violated the CLRA jointly and acting in tandem as
8 business partners, assisting each other on all activities

9
10 127. Defendants knowingly and purposefully violated the CLRA in
11 the following methods:

- 12 a. Violated Civ. Code, § 1770 (a) (1) "Passing off goods or
13 services as those of another" by passing off the services of
14 Nationwide as being provided by the individuals at DRC who
15 had wooed Mr. Malave and built up a relationship of trust with
16 him;
17
18 b. Violated Civ. Code, § 1770 (a) (3)" Misrepresenting the
19 affiliation, connection, or association with, or certification by,
20 another" by completely denying any relationship between the
21 two business partners and deliberately creating confusion so
22 that consumers thought all work was being performed by
23 DRC;
24
25 c. Violated Civ. Code, § 1770 (a) (14) "Representing that a
26
27
28

1 transaction confers or involves rights, remedies, or
2 obligations which it does not have or involve, or which are
3 prohibited by law". Defendant Nationwide non-lawyer
4 employees provided legal representation to Mr. Malave;
5
6 d. Violated Civ. Code, § 1770 (a) (14) "Representing that a
7 transaction confers or involves rights, remedies, or
8 obligations which it does not have or involve, or which are
9 prohibited by law". Defendants together provided a debt
10 settlement service that violated California prorater and check-
11 seller laws, including taking much higher fees then allowed
12 by law and having non-lawyers provide legal advice;
13
14 e. Violated Civ. Code, § 1770 (a) (16) "Representing that the
15 subject of a transaction has been supplied in accordance with
16 a previous representation when it has not." DRC employees,
17 as trained by Nationwide, and DRC's advertisements,
18 promised that the debt settlement service Mr. Malave was
19 buying would be able to work out settlements with creditors,
20 that Mr. Malave would save \$46,017 in principal and interest
21 and that he would be "debt free" in either 22.9 or 24 months.
22 This was not a service Defendants did or could provide.
23
24
25
26
27
28

1 f. Violated Civ. Code, § 1770 (a) (19) by inserting an
2 unconscionable provision in the contract. DNC distributed
3 and convinced Mr. Malave to sign the contract, written and
4 distributed by Nationwide, where Defendants convinced Mr.
5 Malave that they should assume and exercise authority to
6 pay themselves illegal and unowed fees from Plaintiff's bank
7 account.
8
9

10
11 128. At the time that assistance was rendered, Defendants were
12 each aware of their respective roles in these wrongful activities.

13
14 129. Defendants are each jointly liable for the entire loss suffered
15 by the Plaintiff.

16
17 130. Plaintiff requests injunctive relief to stop the illegal business
18 practices of Defendants, including the stopping the continuing violations
19 of Civil Code §1750 et. seq, requiring the Defendants to register with the
20 Department of Corporations under §1750, and stopping the unauthorized
21 practice of law by Defendant Nationwide.
22

23
24 131. Plaintiff additionally seeks actual damages, punitive
25 damages, court costs, attorney's fees and any other relief that the court
26 deems proper.
27

28 **THIRD CAUSE OF ACTION: Violation Of The Electronic Funds**

Transfer Act, 15 U.S.C. § 1693 et seq. against NATIONWIDE

132. Plaintiffs refer to and incorporate by reference the above paragraphs as though set forth fully herein.

133. The Electronic Funds Transfer Act (“EFTA”) provides a basic framework establishing the rights, liabilities, and responsibilities of participants in an electronic fund transfer system. 15 U.S.C. § 1693. The primary objective of the EFTA “is the provision of individual consumer rights.” *Id.*

134. Mr. Malave maintained an “account” as that term is defined in 15 U.S.C. § 1693a(2), and is a “consumer” as that term is defined in 15 U.S.C. § 1693a(5).

135. Nationwide engaged in “unauthorized electronic funds transfers,” as that term is defined in 15 U.S.C. § 1693a(11), by debiting the bank account of Mr. Malave without his permission.

136. Nationwide engaged in “unauthorized electronic funds transfers,” as that term is defined in 15 U.S.C. § 1693a(11), by debiting the Noteworld Trust accounts of Mr. Malave without his permission.

137. The EFTA provides that “[a] preauthorized electronic fund transfer from a consumer’s account may be authorized by the consumer only in writing, and copy of such authorization shall be provided to the

1 consumer when made.” 15 U.S.C. § 1693e(a). “In case of preauthorized
2 transfers from a consumer’s account to the same person which may vary
3 in amount...the designated payee shall, prior to each transfer, provide
4 reasonable advance notice to the consumer, in accordance with the
5 regulations of the Board, of the amount to be transferred and the
6 scheduled date of the transfer.” 15 U.S.C. § 1693e(b).
7

9 138. Nationwide was not the designated payee, yet it is
10 Nationwide that debited Mr. Malave’s account without any advanced
11 notice.
12

13 139. The EFTA’s implementing regulations, known as Regulation
14 E and codified at 12 C.F.R. §§ 205 et seq., provide: “Preauthorization
15 electronic fund transfers from a consumer’s account may be authorized
16 only by a writing signed or similarly authenticated by the consumer. The
17 person that obtains the authorization shall provide a copy to the
18 consumer.” 12 C.F.R. §205.1(d). When “a third party payee fails to obtain
19 the authorization in writing or fails to give a copy to the consumer...it is
20 the third-party payee that is in violation of the regulation.” Id. at ¶ 2.
21

22 140. Defendant Nationwide had no permission, written or
23 otherwise, by Mr. Malave to debit his bank account or his Noteworld
24 Trust Account.
25
26
27
28

1 141. Defendant Nationwide violated the EFTA because
2 Nationwide was initiating electronic fund transfers from Mr. Malave's
3 bank account or his trust account without obtaining prior written
4 authorization.
5

6 142. Further, Nationwide did not provide Mr. Malave with copies of
7 their authorizations or provide reasonable advance notice of the amount
8 to be transferred and the scheduled date of the transfer.
9

10 143. Accordingly, under 15 U.S.C. § 1693m, Plaintiff Mr. Angel
11 Malave seeks damages, statutory damages, costs of suit, including
12 reasonable attorneys' fees, and such other further relief as the Court
13
14
15 deems appropriate.

16 **THIRD CAUSE OF ACTION: Negligent Infliction of Emotional**
17 **Distress against all Defendants**
18

19 144. Plaintiff realleges and incorporates herein by reference the
20 allegations of all paragraphs above.

21 145. Defendant Debt Resolution and its principal Nationwide had a
22 duty towards Mr. Malave based on their contract, their verbal promises,
23 and the power of attorney signed by Mr. Malave;
24

25 146. Defendants engaged in negligent conduct and/or willful
26 violations of statutory standards in their conduct towards their customer,
27
28

1 Mr. Malave.

2 147. As a proximate result of defendants' conduct, Mr. Malave has
3 suffered from great stress, resulting in anxiety and sleeplessness,
4 headaches and decreases in appetite. All this abuse occurred when Mr.
5 Malave was being treated with chemotherapy and trying to beat cancer
6 so he could remain alive and provide for his family.
7

8 WHEREFORE, Plaintiff prays for recovery on each cause of action against
9 Defendants and each of them as follows:
10

- 11 1. For compensatory damages;
- 12 2. For statutory damages
- 13 3. For actual damages including but not limited to emotional distress
14 leading to physical and mental symptoms of suffering, costs of litigation on
15 the four credit card suits, and damage to Plaintiff's credit reputation in
16 amount to be determined at trial;
- 17 4. For Plaintiff's attorney's fees and costs;
- 18 5. Punitive damages against Defendants for their unlawful, oppressive
19 and fraudulent acts against Plaintiff;
- 20 6. Injunctive relieve including, but not limited to, an order stopping
21 Nationwide's practice of unauthorized practice of law and ceasing all
22 Defendants' violations of checksellers and pro-raters law in California;
23
24
25
26
27
28

1 7. Such other and further relief and support that the court deems just
2 and proper.
3

4 Dated: October 14, 2011

Clark Kleinpeter Law

5
6 By


Amy E. Clark Kleinpeter

Attorney for Angel Malave, Plaintiff